

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	:	
	:	Case No. 1:14-cr-0229
Plaintiff,	:	Case No. 1:16-cv-0717
	:	
vs.	:	
	:	OPINION & ORDER
CARMEN OCCHIPINTI,	:	[Resolving Doc. 104]
Defendant.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Defendant Carmen Occhipinti moves *pro se* to vacate his sentence. But Occhipinti has not obtained a certificate of appealability, and thus this Court does not have jurisdiction to hear his claim.

For the reasons stated below, the Court **TRANSFERS** Occhipinti's motion to the Court of Appeals.

I. Background

On July 1, 2014, Occhipinti was indicted on four counts of wire fraud in violation of [28 U.S.C. § 1343](#), seven counts of bank fraud in violation of [18 U.S.C. § 1344\(2\)](#), one count of witness tampering in violation of [18 U.S.C. § 1512\(b\)\(1\)\(12\)](#), three counts of tax evasion in violation of [26 U.S.C. § 7201](#), and two counts of money laundering in violation of [18 U.S.C. § 1957](#).¹

On August 5, 2014, Occhipinti executed a plea agreement with the United States and pleaded guilty to all counts before Magistrate Judge Nancy A. Vecchiarelli.²

¹ Doc. [1](#).

² Non-Doc Entry, dated August 5, 2014.

On December 23, 2014, the Court sentenced Occhipinti to 151-months incarceration, three-years supervised release, \$1,700 special assessment, and restitution in the amount of \$2,094,108.³ The Court inadvertently failed to formally accept the plea at the time of sentencing, and no formal judgment was entered on the docket.⁴

On January 3, 2015, Occhipinti, through counsel, filed a motion to withdraw his guilty plea.⁵ On January 5, 2015, during a status conference and hearing, the Court granted Occhipinti's motion to withdraw his plea.⁶

On January 20, 2015, Occhipinti executed a Rule 11(c)(1)(C) plea agreement with the United States and pleaded guilty to all counts before the Court.⁷ The Court sentenced Occhipinti to 120-months incarceration, five-years supervised release, \$1,700 special assessment, and restitution in the amount of \$2,094,108.⁸

On March 21, 2016, Occhipinti moved to vacate his sentence under [28 U.S.C. § 2255](#).⁹ On July 5, 2016, the Court denied Occhipinti's motion and determined that there was no basis on which to issue a certificate of appealability.¹⁰

³ Doc. [74](#).

⁴ See Doc. [75](#) at 2, 7-8.

⁵ Doc. [55](#).

⁶ Doc. [58](#); see Doc. [75](#) at 12: 15-17.

⁷ Doc. [64](#).

⁸ Doc. [63](#).

⁹ Doc. [78](#).

¹⁰ Doc. [92](#).

II. Discussion

On December 6, 2019, Occhipinti filed the present motion to vacate judgment.¹¹ He alleges that the Court did not have jurisdiction to accept Occhipinti's second guilty plea or to sentence him.¹²

Because this motion collaterally attacks Occhipinti's sentence by presenting grounds for vacating the sentence, this Court must transfer the motion to the Sixth Circuit Court of Appeals "for consideration as [a] motion[] for authorization to file a second or successive § 2255 petition."¹³

III. Conclusion

For the foregoing reasons, the Court **TRANSFERS** the motion to the Court of Appeals as an application to file a second or successive habeas corpus petition.

IT IS SO ORDERED.

Dated: February 28, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

¹¹ Doc. [104](#).

¹² *Id.* at 28. Occhipinti raised this argument in his first motion for relief under [28 U.S.C. § 2255](#). Doc. [78](#) at 11, 14. The Court rejected it, finding that the Court had jurisdiction to accept Occhipinti's second guilty plea and to sentence him. Doc. [92](#) at 6.

¹³ *In re booker*, Nos. 18-3437/3764, [2020 WL 113907](#), at *1 (6th Cir. Jan. 7, 2020).